

ATTACHMENT C

105th Congress 2d Session Senate Report 105-189, Calendar No. 367

Department of Defense Authorization Act for Fiscal Year 1999 Report [to Accompany S. 2060] on Authorizing Appropriations for Fiscal Year 1999 for Military Activities of the Department of Defense, to Prescribe Personnel Strengths for Such Fiscal Year for the Armed Forces, and for Other Purposes Together with Additional Views

Committee on Armed Services United States Senate

Federal facilities

The Armed Services Committee has jurisdiction over the defense related environmental restoration efforts of the Departments of Defense and Energy. As a result, the committee has observed closely the progress of S. 8, the Superfund Reauthorization bill, specifically as it pertains to federal facilities.

During the Environment and Public Works Committee markup of S. 8, an amendment was approved to waive federal sovereign immunity under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. The amendment would require federal facilities to comply with state and local substantive and procedural requirements, rather than the uniform, national process described in the National Contingency Plan.

Under current law, federal facilities are already subject to state laws concerning removal and remedial action, including laws regarding enforcement (42 U.S.C. 9620(a)(4)), but state challenges must be brought after remedial action is complete. (42 U.S.C. 9613 (g)). Federal facilities must comply with state substantive cleanup standards, which may be more stringent than federal standards and must be legally applicable or relevant and appropriate. (42 U.S.C. 9621).

Both the Department of Defense and the Department of Energy have expressed concerns about the impact the proposed amendment could have on cleanup activities at their respective sites. In particular, the two agencies have expressed concern that because the amendment would render federal facilities susceptible to state and local procedural requirements (such as fees and permits), state and local authorities could compel federal agencies to stop Superfund cleanup actions pending completion of procedural requirements. The amendment could invalidate interagency agreements regarding cleanup schedules and milestones by superimposing state and local substantive and procedural requirements that previously did not apply. As a result, the amendment could substantially increase federal facilities cleanup costs and enable states to reorder funding priorities at Superfund sites, shifting resources away from sites with higher relative risks.

There are thousands of Department of Defense sites and Department of Energy sites that have been identified as requiring environmental cleanup, and there is the potential that additional such sites may be identified. The cost to the taxpayers of completing the environmental cleanup of these facilities is likely to be in the hundreds of billions of dollars. Funding for site assessments and cleanup is provided

through agency budgets and congressional appropriations. The Department of Defense prioritizes funding for cleanup sites through relative risk site evaluations and cleanup milestones committed to in Federal Facility agreements. Based on those cleanup priorities the Department has maintained a steady fiscal year funding level of about \$2.0 billion during the past five years. The Department of Energy has also committed to cleanup schedules under federal facility compliance agreements and provided for a steady environmental restoration funding profile of about \$1.5 billion.

Congress must ensure that federal agencies maintain coherent national cleanup programs with resources and funds directed to federal sites where the needs and prospective benefits are the greatest. Because Congress strictly controls the funding available to the Departments of Defense and Energy through the annual authorization and appropriations process, the agencies do not have the same degree of funding flexibility as the private sector. For this reason, the Departments have expressed concern that new or accelerated requirements could divert funds from higher priority cleanup activities and other important national security missions, reducing the overall level of protection for public health and safety.

The committee believes that the full scope of concerns expressed by the Department of Defense and the Department of Energy about the proposed amendment should be made a part of the public record so that they may be addressed in the course of debate on the bill. Accordingly, the committee directs the Secretary of Defense and the Secretary of Energy to submit a report, not later than September 30,

1998, to the congressional defense committees on the impact of the proposed amendment to S. 8. The report, which should be prepared in consultation with the Environmental Protection Agency, should specifically address: (1) any additional costs that might be incurred by the taxpayers as a result of the proposed amendment; and (2) any impact that the amendment may have on the cleanup of Department of

Defense and the Department of Energy sites pursuant to agreements that the two agencies have entered into with the Environmental Protection Agency and with State and local governments.